

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. A-01/08-24  
 )  
Appeal of )

# INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division, increasing the amount of his patient share under the Long-Term Care Medicaid Program. The issue is whether the Department correctly determined the amount of his patient share. The facts are not in dispute.

## FINDINGS OF FACT

1. The petitioner is an eighty-two-year-old man who receives Long-Term Care Medicaid. Petitioner receives income from both the Social Security Administration and the Veteran's Administration. Petitioner lives in the community with his spouse; his spouse is employed.

2. Petitioner received notices of several increases in his patient share from zero up to \$402.25 per month within the period of one month. Petitioner's history will be more fully set out below.

3. Starting with the March 29, 2007 Notice from the Department, petitioner had income of \$1,484.50. The Department applied deductions for medical insurance (\$93.50), community maintenance allowance (\$925), and non-covered medical expenses (\$2,975.85). The non-covered medical expenses included both payment for adaptive equipment and other non-covered items. Based on the deductions, the Department computed a zero patient share for petitioner.

4. A small portion of the cost of the adaptive equipment remained for December 2007. The Department sent a Notice dated December 10, 2007 informing petitioner that his patient share for December 2007 would be \$256.90 payable from income received in January 2008 and that his January 2008 patient share would be \$395.20.

5. Petitioner received two subsequent notices dated January 6, 2008 and January 9, 2008 recalculating petitioner's patient share based on changes to his income and health insurance costs. The January 9, 2008 Notice informed petitioner that his patient share for January 2008 would be \$402.25 payable from February 2008 income. Petitioner's monthly income is \$1,519.40 (reflecting an increase to his Social Security income). His monthly deductions are \$96.40 for health insurance (reflecting an increase for Medicare

payments), \$950 community maintenance allowance (reflecting an increase to the standard allowance), and \$70.75 for non-covered medical expenses. After applying the deductions, petitioner's patient share is \$402.25 per month.

6. Petitioner requested a fair hearing on January 14, 2008 and a hearing was held on February 20, 2008.

7. Petitioner testified that his monthly expenses for necessities total \$2,165. Petitioner is concerned that the increase in his patient share will leave him without the funds necessary to maintain his household. He believes that the community maintenance allowance is not adequate and that there should be a way to make a decision based on his circumstances.

ORDER

The Department's decision is affirmed.

REASONS

The Department's policies determining the amount of patient share for Long-Term Care Medicaid recipients are found at M430-432. M430 states, in part:

Once the department determines individuals are eligible for long-term care, including waiver and hospice services, it computes how much of their income must be paid to the long-term care provider each month for the cost of care (patient care). . . . The Department

determines the patient share at initial eligibility, eligibility redeterminations, and when changes in circumstances occur.

. . .

When monthly income and medical expenses are stable, the patient share remains constant. When deductions fluctuate, the patient share is likely to vary. When allowable deductions exceed the individual's income, the patient share is zero for as many months needed to exhaust the medical expenses against the patient's available income. The month when the remaining medical expense deductions no longer exceed the patient's income, the balance is the patient share payment for that month.

In addition, the applicable deductions are set out in M432, which states, in part:

. . .the department deducts the following items from the individual's patient share specified in the subsections below in the following order:

- (a) a personal needs allowance or community maintenance allowance (M432.1);
- (b) home upkeep expenses, if applicable (M432.2)<sup>1</sup>;
- (c) allocations to community spouse or maintenance needs of family members living in the community, if applicable (M432.3)<sup>2</sup>; and
- (d) reasonable medical expenses incurred, if applicable (M420-M422).

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<sup>1</sup> Home upkeep expenses are paid for a short period of time when an individual is institutionalized and there is an expectation that the individual will be returning to his home.

<sup>2</sup> Petitioner's spouse has not received an allocation due to her earnings. If her income decreases or certain household expenses increase, petitioner may ask for a recalculation.

In this case, the Department has correctly applied the applicable deductions from petitioner's income. The monthly community maintenance allowance is a standard amount; the amount was increased from \$925 to \$950 effective January 1, 2008. P-2420D(10). In addition, the Department correctly determined the remaining non-covered medical expenses after the adaptive equipment was paid in full.

The Board can sympathize with petitioner's position that that the amount of deductions is inadequate or that the Board should have the power to make an exception, but we are bound to comply with applicable regulations and policy. In as much as the decision by the Department is in accord with its regulations, the Department's decision is affirmed. 3 V.S.A. § 3091(d); Fair Hearing Rule No. 17.

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